



Data Bill Showdown Near

By Bob Kuttner

Washington Post Staff Writer

A House-Senate conference committee is scheduled to meet this afternoon to complete action on a freedom of information bill that President Nixon had been advised to veto.

President Ford's decision on whether to sign the measure, which is almost certain to win final passage, could provide an early test of the limits of his commitment to "openness and candor" in government.

The bill is intended to close loopholes in the 1966 Freedom of Information Act, and to make it harder for officials to deny government documents arbitrarily to the press and the public.

Sen. Roman Hruska (R-Neb.) had urged Mr. Nixon to veto the measure. The Justice Department has raised objections to several provisions, though a ranking official denied yesterday that the department wants a veto.

The package of amendments has been gestating since 1972, when the House Foreign Operations and Government Information Subcommittee began oversight hearings on enforcement of the 1966 act.

The hearings and a companion investigation by the Senate Administrative Practices Subcommittee revealed a formidable array of bureaucratic devices for evading the intent of the act. In a number of cases the government, in effect, simply denied the request for information, and invited the citizen to sue.

Malvin Schecter, an editor of Hospital Practice Magazine, took the Social Security Administration to court in order to pry loose some nursing home inspection reports. The government didn't appeal the decision, but when Schecter went back to request a second batch, he had to file suit all over again.

The Agriculture Department used the same ploy, unsuccessfully, to discourage attempts by a public interest group to obtain meat inspection records.

Sen. Birch Bayh (D-Ind.) sued the Federal Trade Commission to get a look at a transcript concerning the FTC's antitrust complaint against eight oil companies. He won, but when reporters asked for copies of the same transcript, the FTC ruled that they had to file their own Freedom of Information Act requests.

The problem, according to Sen. Edward M. Kennedy (D-Mass.) and Rep. William Moorhead (D-Pa.), sponsors of the amendments, is that under the existing law a bureaucrat can give the public an extended runaround and face no sanction even if the citizen has the



SEN. EDWARD M. KENNEDY. REP. WILLIAM MOORHEAD
... sponsors of amendments to information bill

stamina to file and win a suit. When citizens did sue to enforce their rights, the government lost more than half the cases.

A Justice Department advisory committee, which counsels other agencies on which refusals can be defended under the act, has lately improved that ratio somewhat.

The legislation would add incentives to make officials release the information without being taken to court.

Last week, the House and Senate conferees tentatively agreed on all but one provision of the bill. The measure would:

- Permit citizens who win freedom of information suits to recover attorneys' fees.
- Prohibit delays in responding to requests by setting a time limit of 10 working days.
- Shift the burden of proof to the government when it seeks to deny information in an "investigatory file."

• Require agencies to develop an index of publicly available information, and to set uniform and reasonable fees for document searches.

• Give courts the power to judge whether a secret document was properly classified in the first place, overruling the Supreme Court's decision in the unsuccessful suit by Rep. Patsy Mink (D-Hawaii) and others to obtain scientific reports from the Environmental Protection Agency on the possible hazards of the Amchitka nuclear test. The court ruled that the government's classification of a document is not subject to judicial review.

Still unresolved is a tough sanction provision added by the Senate, which would permit a judge to order penalties for an official who denied in-

formation "without reasonable basis in law." Officials could be suspended without pay for up to 60 days.

Kennedy, the main Senate sponsor of the amendment, contends that the sanction is necessary to "eliminate many of the cases where obstinate officials disregard the law in order to minimize embarrassment to the agency."

Many of the House conferees consider the provision unfair to the official, and bad law. They argue that the rest of the package provides ample incentives. A possible compromise suggested by Rep. Paul McCloskey (R-Calif.) would give the disciplinary powers to the agency rather than the courts.

Apart from the sanction provision, the measure is not controversial among congressmen. It passed both chambers earlier this year with overwhelming bipartisan backing and frequent references to the need for post-Watergate reform.

However, the Justice Department raised objections to the provisions permitting the courts to overrule security classifications of documents, the shortened time limits, and particularly to broadening access to information in law enforcement files, which was strenuously opposed by the FBI.

In keeping with the spirit of the legislation, the sessions of the House-Senate conference are open to the public, still a relatively rare occurrence in Congress. President Ford has not announced a position on the bill.



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Information Bill Veto Is Hinted

By Bob Kuttner
Washington Post Staff Writer

House and Senate conferees reluctantly postponed final action on an expanded freedom of information bill yesterday afternoon after hearing from the Justice Department that President Ford might veto the measure.

The conference, which had previously agreed on all but one section, was meeting to resolve differences on a provision setting penalties for officials who wrongfully withhold public documents.

Yesterday morning, however, Deputy Attorney General Laurence H. Silberman telephoned several House conferees to warn that other provisions might be unacceptable to Mr. Ford. Sen. Edward M. Kennedy (D-Mass.), one of the conferees, said he got a similar message from Attorney General William B. Saxbe.

The bill, under consideration since 1972, would expand the 1966 Freedom of Information Act by shortening the deadline for agencies to reply to requests, giving courts power to review security classifications, and placing more of a burden on officials who withhold information.

The Justice Department had criticized certain provisions, particularly one broadening access to investigatory files except where the government can show potential damage to law enforcement. Supporters say this is needed to counteract the bureaucratic device of hiding embarrassing documents in investigatory files solely to keep them secret.

The conferees agreed to a Kennedy motion to delay final action one week so Mr. Ford can present his views, but several members saw the White House request as a

Justice Department maneuver to re-open issues the conference has already settled.

"This is disgraceful," said Rep. John Moss (D-Calif.), a leading sponsor of the House bill. "We should settle this right now. I have absolutely no fear of a veto. I am not impressed by a threat from the deputy attorney general."

A Kennedy aide noted that the Justice Department wasn't represented at the drafting sessions of the conference last week. "Now they're using the excuse of the change of power at the White House to open it up all over again," he said.

Kennedy said the conferees should give Mr. Ford the courtesy of a week to review the bill, but he indicated he would oppose any move to dilute the provisions already approved by the conference.

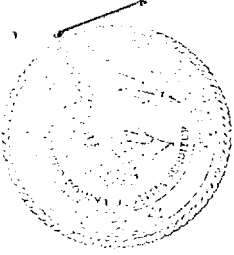


TAB C

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Office of the Attorney General

Washington, D.C. 20530



Freedom of Information Act Amendments

A number of departments and agencies in the Executive Branch have severe problems with S. 2543 and H.R. 12471 presently in conference. Several of the provisions contained in these bills will make it virtually impossible for the agencies to effectively administer the Freedom of Information Act.

The four principal objections to the bill are:

1. judicial review and in camera inspection of classified documents. This legislation would vest unfettered discretion in the courts to release to the public documents classified by responsible officials. No adequate standards or procedures are set forth in the bill to guide the judge in second-guessing foreign policy or defense experts even though he may have no such expertise.
2. release of investigatory records. The bill narrows the present exemption for investigatory files to a degree which poses serious dangers to the right of individual privacy. All files regardless of age would be subject to release under standards which fail to take into account the practicalities and legitimate needs of the law enforcement process.
3. sanctions against executive employees. The provision authorizing suspension of pay for an employee who improperly denies a Freedom of Information request breeds irresponsibility. The result will be that because of fear of disciplinary action material will be released which should properly be withheld. Stretched to its conclusion, it could also result in a judge suspending the head of an agency appointed by the President and confirmed by the Senate.

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4. unreasonable time limits. Rigid requirements are imposed in the bill which make it impossible for an agency to adequately review requested records, particularly if the material sought is voluminous, complex, or stored in distant places. The limits are unworkable and counter productive because from necessity they will result in numerous denials; with additional time many of these requests might be granted.

The last two - sanctions and time limits - are particularly troublesome when viewed together.

In addition to these four matters, the agencies have additional but less significant concerns with portions of the bill: lack of authorization, payment by the government of fees for plaintiff's litigative counsel, restrictions on fees chargeable for agency examination and screening of records.

Should the conference report a bill containing these provisions in their present form, it is likely that the Departments of Justice, State, Defense, the CIA, CSC and OMB would recommend to the President that he veto the legislation.



That (a) the fourth sentence of section 552(a)(2) of title 5, United States Code, is deleted and the following substituted in lieu thereof:

"Each agency shall also maintain and make available for public inspection and copying [current indexes] providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. [Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication.]

(b)(1) Section 552(a)(3) of title 5, United States Code, is amended to read as follows:

"(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which [(A) reasonably describes such records and (B) is made in accordance with published rules stating the time, place, fees, (if any) and procedures to be followed, shall make the records promptly available to any person."

(2) Section 552(a) of such title 5 is amended by redesignating paragraph (4) as paragraph (5) and by inserting immediately after paragraph (3) the following new paragraph:

"(4)(A) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying a uniform schedule of fees applicable to all constituent units of such agency. Such fees shall be limited to reasonable standard charges for document search and duplication and provide recovery of only the direct costs of such search and duplication. Documents shall be furnished without charge or at a reduced charge where the agency determines that

waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. ~~Such fees shall not be charged~~

~~(i) the fees would, for a request or series of related requests, amount to less than \$3:~~

~~"(ii) the records requested are not found; or~~

~~"(iii) the records located are determined by the agency to be exempt from disclosure under subsection (b).~~

"(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter do novo, [and may examine the contents of any agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section,] and the burden is on the agency to sustain its action.

"(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after the service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

"(D) Except as to cases the court considers of greater importance, proceedings before the district court, as authorized by this subsection, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

"(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed. ~~In exercising its discretion under this paragraph, the~~

~~shall consider the benefit to the public, if any, deriving from the case, the commercial benefit to the complainant and the interest in the records sought.~~

"(F) Whenever records are ordered by the court to be made available under this section, the court shall on motion by the complainant find whether the withholding of such records was without reasonable basis in law and which Federal officer or employee was responsible for the withholding. Before such findings are made, any officers or employees named in the complainant's motion shall be personally served a copy of such motion and shall have 20 days in which to respond thereto, and shall be afforded an opportunity to be heard by the court. If such findings are made, the court shall, upon consideration of the recommendation of the agency, direct that an appropriate official of the agency which employs such responsible officer or employee suspend such officer or employee without pay for a period of not more than 60 days or take other appropriate disciplinary or corrective action against him.

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"(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member."

(c) Section 552(a) of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall--

"(i) determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

"(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in

whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

"(B) In unusual circumstances as specified in this subparagraph, the time limits prescribed in ^{either} clause (i) ^{or (ii)} of subparagraph (A) may be extended by written notice to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this subparagraph, 'unusual circumstances' means, but only to the extent reasonably necessary to the proper processing of the particular request--

"(i) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

"(ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

"(iii) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

"(C) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable

time limit provisions of this paragraph. Upon any determination

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by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request."

SEC. 2. (a) Section 552(b)(1) of title 5, United States Code, is amended to read as follows:

(A)
"(1) ~~specifically authorized under criteria established~~
by an Executive order to be kept secret in the interest of
national defense or foreign policy and ^(B) ~~are in fact~~
~~classified pursuant to such Executive order;~~
properly ~~covered by such criteria;~~"

(b) Section 552(b)(7) of title 5, United States Code, is amended to read as follows:

"(7) investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute a clearly unwarranted invasion of personal privacy, (D) disclose the identity of an informer, ~~or~~ (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;"

(c) Section 552(b) of title 5, United States Code, is amended by adding at the end the following "Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection."

SEC. 3. Section 552 of title 5, United States Code, is amended by adding at the end thereof the following new subsections:

"(d) On or before March 1 of each calendar year, each agency shall submit a report covering the preceding calendar year to the Speaker of the House and President of the Senate for referral to the appropriate committees of the Congress. The report shall include--

agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

"(2) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

"(3) the names and titles or positions of each person responsible for the denial of records requested under this section, and the number of instances of participation for each;

"(4) a copy of every rule made by such agency regarding this section;

"(5) a copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and

"(6) such other information as indicates efforts to administer fully this section.

"The Attorney General shall submit an annual report on or before March 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subsections (a)(4)(E), (F), and (G). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

"(e) Notwithstanding section 551(1) of this title, for purposes of this section, the term 'agency' means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency."

~~SEC. 4. There is hereby authorized to be appropriated such sums as may be necessary to assist in carrying out the purposes of this Act and of section 552 of title 5, United States Code.~~

~~SEC. 3.~~⁴ The amendments made by this Act shall take effect on the ninetieth day beginning after the date of enactment of this Act.

Court Review Provision in S. 2543

11 “(B)(i) On complaint, the district court of the United
12 States in the district in which the complainant resides, or
13 has his principal place of business, or in which the agency
14 records are situated, or in the District of Columbia, has juris-
15 diction to enjoin the agency from withholding agency records
16 and to order the production of any agency records improperly
17 withheld from the complainant. In such a case the court shall
18 consider the case de novo, with such in camera examination
19 of the requested records as it finds appropriate to determine
20 whether such records or any part thereof may be withheld
21 under any of the exemptions set forth in subsection (b) of
22 this section, and the burden is on the agency to sustain its
23 action.

24 “(ii) In determining whether a document is in fact spe-
25 cifically required by an Executive order or statute to be kept

(continued on next page)

Court Review Provision in S. 2543 (continued)

1 *secret in the interest of national defense or foreign policy,*
2 *a court may review the contested document in camera if it is*
3 *unable to resolve the matter on the basis of affidavits and other*
4 *information submitted by the parties. In conjunction with*
5 *its in camera examination, the court may consider further*
6 *argument, or an ex parte showing by the Government, in ex-*
7 *planation of the withholding. If there has been filed in the*
8 *record an affidavit by the head of the agency certifying that*
9 *he has personally examined the documents withheld and has*
10 *determined after such examination that they should be with-*
11 *held under the criteria established by a statute or Executive*
12 *order referred to in subsection (b)(1) of this section, the*
13 *court shall sustain such withholding unless, following its in*
14 *camera examination, it finds the withholding is without a rea-*
15 *sonable basis under such criteria.*

TAB F

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RECOMMENDATION 24: Principles and Guidelines for
Implementation of the Freedom of Information Act

The Freedom of Information Act, 5 U.S.C. § 552, expresses important policies with respect to the availability to the public of records of Federal agencies. To achieve free access to and prompt production of identifiable government records in accordance with the terms and policies of the Act, each agency* should conform to the statutory policy encouraging disclosure, adopt procedural regulations for the expeditious handling of information requests, and review the fees charged for providing information.

RECOMMENDATION

A. General Principles

Agencies should conform to the following principles in handling requests for information:

1. Each agency should resolve questions under the Freedom of Information Act with a view to providing the utmost information. The exemptions authorizing non-disclosure should be interpreted restrictively.
2. Each agency should make certain that its rules provide the fullest assistance to inquirers, including information relating to where requests may be filed. It should provide the most timely possible action on requests for information.
3. When requested information is partially exempt from disclosure the agency should, to the fullest extent possible, supply that portion of the information which is not exempt.

*The term agency as used herein denotes an agency, executive department, or a separate administration or bureau within a department which has adopted its own administrative structure for handling requests for records.

sufficiently for the purpose of finding it should be acceptable. A standard form may be offered as an optional aid.

b. Categorical requests.

i. Requests calling for all records falling within a reasonably specific category should be regarded as conforming to the statutory requirement of "identifiable records" if the agency would be reasonably able to determine which particular records come within the request and to search for and collect them without unduly burdening or interfering with agency operations because of the staff time consumed or the resulting disruption of files.

ii. If any agency responds to a categorical request by stating that compliance would unduly burden or interfere with its operations, it should do so in writing, specifying the reasons why and the extent to which compliance would burden or interfere with agency operations. In the case of such a response the agency should extend to the requester an opportunity to confer with it in an attempt to reduce the request to manageable proportions by reformulation and by outlining an orderly procedure for the production of documents.

3. Partial disclosure of exempt records and files.

Where a requested file or record contains exempt information that the agency wishes to maintain confidential, it should offer to make available the file or a copy of the record with appropriate deletions if this can be done without revealing the exempt information.

4. Time for reply to request.

Every agency should either comply with or deny a request for records within ten working days of its receipt unless additional time is required for one of the following reasons:

a. The requested records are stored in whole or part at other locations than the office having charge of the records requested.

b. The request requires the collection of a substantial number of specified records.

c. The request is couched in categorical terms and requires an extensive search for the records responsive to it.

d. The requested records have not been located in the course of a routine search and additional efforts are being made to locate them.

e. The requested records require examination and evaluation by personnel having the necessary competence and discretion to determine if they are: a) exempt from disclosure under the Freedom of Information Act and b) should be withheld as a matter of sound policy, or revealed only with appropriate deletions.

When additional time is required for one of the above reasons, the agency should acknowledge the request in writing within the ten-day period and should include a brief notation of the reason for the delay and an indication of the date on which the records would be made available or a denial would be forthcoming.

The ten-day time period specified above should begin to run on the day that the request is received at that office of the agency having charge of the records. When a request is received at an office not having charge of the records, it should promptly forward the request to the proper office and notify the requester of the action taken.

If an agency does not reply to or acknowledge a request within the ten-day period, the requester may petition the officer handling appeals from denials of records for appropriate action on the request. If an agency does not act on a request within an extended deadline adopted for one of the reasons set forth above, the requester may petition the officer handling appeals from denials of records for action on the request without additional delay. If an agency adopts an unreasonably long extended deadline for one of the reasons set forth above, the requester may petition the officer handling appeals from denials of records for action on the request within a reasonable period of time from acknowledgment.

An extended deadline adopted for one of the reasons set forth above would be considered reasonable in all cases if it does not exceed ten additional working days. An agency may adopt an extended deadline in excess of the ten additional working days (i.e. a deadline in excess of twenty working days from the time of initial receipt of the request) where special circumstances would reasonably warrant the more extended deadline and they are stated in the written notice of the extension.

5. Initial denials of requests.

a. Form of denial.

A reply denying a written request for a record should be in writing and should include:

i. A reference to the specific exemption under the Freedom of Information Act authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.

ii. An outline of the appeal procedure within the agency and of the ultimate availability of judicial review in either the district in which the requester resides or has a principal place of business, or in which the agency records are situated.

If the requester indicates to the agency that he wishes to have a brief written statement of the reasons why the exempt record is being withheld as a matter of discretion where neither a statute nor an executive order requires denial, he will be given such a statement.

b. Collection of denials.

A copy of all denial letters and all written statements explaining why exempt records have been withheld should be collected in a single central-office file.

c. Denials; protection of privacy.

Where the identity of a requester, or other identifying details related to a request, would constitute an unwarranted

invasion of personal privacy if made generally available, as in the case of a request to examine one's own medical files, the agency should delete identifying details from copies of the request and written responses to it that are made available to requesting members of the public.

6. Intra-agency appeals.

a. Designation of officer for appeals.

Each agency should publicly designate an officer to whom a requester can take an appeal from a denial of records.

b. Time for action on appeals.

There should be only one level of intra-agency appeal. Final action should be taken within twenty working days from the time of filing the appeal. Where novel and very complicated questions have been raised, the agency may extend the time for final action for a reasonable period beyond twenty working days upon notifying the requester of the reasons for the extended deadline and the date on which a final response will be forthcoming.

c. Action on appeals.

The grant or denial of an appeal should be in writing and set forth the exemption relied on, how it applies to the record withheld, and the reasons for asserting it. Copies of both grants and denials on appeal should be collected in one file open to the public and should be indexed according to the exemptions asserted and, to the extent feasible, according to the type of records requested.

d. Necessity for prompt action on petitions complaining of delay.

Where a petition to an appeals officer complaining of an agency's failure to respond to a request or to meet an extended deadline for responding to a request does not elicit an appropriate response within ten days, the requester may treat his request as denied and file an appeal. Where a petition to an

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With regard to the provision in S. 2543 (now H.R. 12471) which would allow a court to direct that an agency discipline an employee if the court determines that the employee has withheld records "without a reasonable basis in law," we offer the following comments:

As an initial matter it should be pointed out that as far as we have been able to determine the proposed provision is wholly unprecedented and without analogy anywhere in Federal law. This is so in two respects. First, it gives the courts authority to direct that disciplinary action be taken against Federal employees -- in other words, the courts are given responsibility for initiating employee discipline. Thus, the court's role is not limited, as it has traditionally been, to review of agency-initiated disciplinary action. Rather, the provision/contemplates that the court will make the initial and sole determination of whether the conduct of a particular Federal employee warrants suspension from government service and if so, for how long, or possibly, whether he should be removed.

We think it plain that the courts would not look with favor upon such a responsibility. Indeed, the courts have consistently recognized that the administration of the Federal personnel system, especially employee discipline, is manifestly an executive function. For this reason, the courts have made it clear that their role in these matters is properly limited to review of administrative action to determine whether proper procedures were followed and whether all constitutional and statutory rights have been safeguarded. See, e.g., Keim v. United States, 177 U.S. 290 (1900); Horne v. United States, 419 F. 2d 416 (Ct. Cl. 1969); McGhee v. Johnson, 420 F. 2d 445 (CA. 10, 1970).

At all events, since in our view the proposed legislation entrusts upon the courts a wholly novel and demonstrably non-judicial responsibility, those who favor the proposal should solicit the views of the Judicial Conference before taking further action on it.

The provision is unique in a second and more important respect, as well. For we know of no law which, as this one would, exposes government employees to liability for the consequences of actions taken within the scope of their official duties. To be sure, the question of personal liability typically arises in the context of a suit for damages against an employee or official for action taken in the course of that person's official duties. Through the doctrine of official immunity the courts have immunized government workers from such liability out of a realistic understanding that the spectre of it "might appreciably inhibit the fearless, vigorous, and effective administration of policies of Government" (Barr v. Matteo, 360 U.S. 564, 571 (1958)). But, surely, the prospect of suspension without pay for up to 60 days is a form of personal liability as "inhibiting" as the threat of an adverse money judgment. And, it is therefore clear that the rationale which underlay the official immunity doctrine is fully apposite here and, we think, provides a conclusive basis for rejecting the proposal.

In this connection, we do not believe it is a sufficient answer to point out that the proposed legislation exposes to liability only those persons who are responsible for withholding information "without [a] reasonable basis in law." Presumably, the point is that the sanction of discipline would only be used against those Federal employees and officials who discharge their responsibilities under the Freedom of Information Act in a willfully irresponsible manner and that such persons are not worthy of immunity from personal liability.

A similar argument has been made by those who would abrogate the official immunity privilege where a government worker in the course of his duties maliciously or willfully defames another person. As the Supreme Court has pointed out (Barr v. Matteo, 360 U.S. at 565), however:

The fact that the action here taken was within the outer perimeter of petitioner's line of duty is enough to render the privilege applicable, despite the allegations of malice in the complaint, for as this Court has said of legislative privilege:

.. "The claim of an unworthy purpose does not destroy the privilege: Legislators are immune from deterrents to the uninhibited discharge of their legislative duty, not for their private indulgence but for the public good. One must not expect uncommon courage even in legislators. The privilege would be of little value if they could be subjected to the cost and inconvenience and distractions of a trial upon a conclusion of the pleader, or to the hazard of a judgment against them based upon a jury's speculation as to motives." *Tenney v. Brandhove*, 341 U.S. 367, 377.

The same reasoning applies here. And if the personal liability of an employee who withholds information under the Freedom of Information Act is to turn on "the hazard of a judgment" as to whether the withholding had "a reasonable basis in law," it seems clear that the spectre of an adverse judgment on this score will serve as a deterrent to uninhibited discharge of the official function. This, in turn, ^{will} undermine the public's interest in the effective administration of government policies.

The court also stated in the Barr case:

"In exercising the functions of his office, the head of an Executive Department, keeping within the limits of his authority, should not be under an apprehension that the motives that control his official conduct may at any time, become the subject of inquiry in a civil suit for damages. It would seriously cripple the proper and effective administration of public affairs as entrusted to the executive branch of the government, if he were subjected to any such restraint. He may have legal authority to act, but he may have such large discretion in the premises that it will not always be his absolute duty to exercise the authority with which he is invested. But if he acts, having authority, his conduct cannot be made the foundation of a suit against him personally for damages, even if the circumstances show that he is not disagreeably impressed by the fact that his action injuriously affects the claims of particular individuals."

(Citing Spalding v. Vilas, 161 U.S. 483, 498, 499 (1895)).

* * *

The matter has been admirably expressed by Judge Learned Hand:

"It does indeed go without saying that an official, who is in fact guilty of using his powers to vent his spleen upon others, or for any other personal motive not connected with the public good, should not escape liability for the injuries he may so cause; and, if it were possible in practice to confine such complaints to the guilty, it would be monstrous to deny recovery. The justification for doing so is that it is impossible to know whether the claim is well founded until the case has been tried and that to submit all officials, the innocent as well as the guilty, to the burden of a trial and to the inevitable danger of its outcome, would dampen the ardor of all but the most resolute, or the most irresponsible in the unflinching discharge of their duties. Again and again the public interest calls for action which may turn out to be founded on a mistake, in the face of which an official may later find himself hard put to it to satisfy a jury of his good faith. There must indeed be means of punishing public officers who have been truant to their duties; but that is quite another matter from exposing such as have been honestly mistaken to suit by anyone who has suffered from their errors."

(Citing Gregoire v. Biddle, 177 F.2d 579, 581 (2d Cir. 1949)).

The threat of a penalty, even one not so harsh as a sixty-day suspension without pay, will render all decisions on Freedom of Information Act requests at the staff level decisions made at the peril of the office making them. Public officers at the staff level will exercise administrative discretion under a Damocletian sword. To avoid risks they will defer to a higher authority with the result that high-level officials may be flooded with Freedom of Information Act decisions which could require inordinate amounts of their time, and

consequent inefficiency in the conduct of agency operations. Further, the suspension of high-level agency officials, directed by a court solely on the basis of its "findings" in Freedom of Information Act litigation, without any knowledge of or recognition by the court of other pending and perhaps pressing matters within the responsibility of those officials, can only result in inefficient and ineffective Government operations.

Also, it appears that the suspension provision might supersede the Lloyd-La Follette Act and the Veterans Preference Act, both of which provide appeal rights for employees subject to adverse actions. The provision reads that the court may direct an appropriate official of the agency to suspend an employee for a period of 60 days or take other appropriate action, thereby apparently leaving no discretion with the employing agency as to whether or when disciplinary action will be imposed or the severity of that action. In such a case, it might be a needless exercise for an employee to pursue his appeal, including his appeal to an independent administrative body outside his agency, if neither the decision to impose discipline nor the severity of that discipline would be subject to administrative review. Legislation should not be tolerated which raises such serious questions about the applicability of long standing statutory rules concerning the fairness with which employees are treated.

In addition, the language of the provision is ambiguous in a number of respects. For example:

1. The court may direct that the agency suspend the employee for 60 days "or take other appropriate or corrective action against him". It is unclear whether the maximum penalty which may be imposed is a sixty-day suspension or whether the phrase "other appropriate or corrective action" is authority to impose

disciplinary measures up to and including removal. Again, poor drafting seems to raise more problems than it resolves.

2. We have previously expressed our view that the suspension provision would inhibit staff recommendations on Freedom of Information Act requests, thereby causing these decisions to be made at higher levels without the benefit of staff advice. Should the court determine that the head of the agency is the responsible official, there is no superior official it can direct to impose the disciplinary action. (Other, perhaps, than the President, and we leave aside what we view as the serious constitutional question of whether a court has the authority to direct disciplinary action against a Presidential appointee, particularly if that action involves removal.)

3. The standard of law established in the provision for discipline against a Federal employee is that he withheld records "without a reasonable basis in law". The language of the provision does not define this term and we are aware of no generally accepted legal definition of this language. We believe that such a standard, if contained in a criminal statute would be declared unconstitutionally vague, and could create extreme difficulty in interpretation and implementation of this legislation.

The provision would require a court to litigate twice the question of whether a particular record must be disclosed. As the provision is now drawn, the court first makes a decision as to whether the records should be made available, and then decides the issue of whether a Federal officer or employee acted without reasonable basis in law in withholding the records. It should be noted that this responsible officer or employee need not be a named party in the original suit and, in fact, the bill seems to contemplate that any

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officer or employee who shares responsibility for the withholding may be subject to court-ordered discipline. If the responsible employee was not a named party, and has therefore had no prior opportunity to assert a legal basis for his decision to withhold, he certainly should be given the opportunity to collaterally attack the court's prior determination that the records are not exempt under the Act, — but the bill is silent on this issue which seems to raise serious due process questions.

Finally, it should be pointed out that the choices which must be made by those responsible for processing Freedom of Information Act requests are not always clear-cut. Congress has not seen fit to mandate the disclosure of all government information, and one who processes a request for information does not, therefore, perform a mere ministerial act. Rather, Congress has determined that certain kinds of information should not be disclosed and it has described the various categories of non-disclosable information in the nine exemptions that are set forth in the Act. See 5 U.S.C. 552(b). Whether particular information is encompassed by the exemptions is obviously often a matter of judgment, and necessarily so, since Congress has chosen to describe the exempted material in very general terms. The point, of course, is that the Act by its terms invites those responsible for its administration to make judgments as to whether particular information should or should not be disclosed. In view of this, Congress should not at the same time punish those whose judgments on review turn out to have been wrong.

Again, we are mindful of Congress' concern over abuses by Government agencies and of its fear that without a disciplinary sanction agencies will subvert the basic principle of openness which underlay the Act by irresponsible invocation of the exemptions. A comparable fear was voiced to the Supreme Court when it was asked to reconsider the need for the official immunity privilege. What the Court said in that context, we

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We are told that we should forbear from sanctioning any such rule of absolute privilege lest it open the door to wholesale oppression and abuses on the part of unscrupulous government officials. It is perhaps enough to say that fears of this sort have not been realized within the wide area of government where a judicially formulated absolute privilege of broad scope has long existed. It seems to us wholly chimerical to suggest that what hangs in the balance here is the maintenance of high standards of conduct among those in the public service. To be sure, as with any rule of law which attempts to reconcile fundamentally antagonistic social policies, there may be occasional instances of actual injustice which will go unredressed, but we think that price a necessary one to pay for the greater good. And there are of course other sanctions than civil tort suits available to deter the executive official who may be prone to exercise his functions in an unworthy and irresponsible manner. We think that we should not be deterred from establishing the rule which we announce today by any such remote forebodings.

TAB

93^d CONGRESS
2^d SESSION

H. R. 12471

IN THE SENATE OF THE UNITED STATES

MARCH 19, 1974

Received

MAY 30, 1974

Considered, amended, read the third time, and passed

[Strike out all after the enacting clause and insert the part printed in italic]

AN ACT

To amend section 552 of title 5, United States Code, known as the Freedom of Information Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 Section 1. ~~(a)~~ The fourth sentence of section 552 ~~(a)~~
4 ~~(2)~~ of title 5, United States Code, is amended by striking
5 out "and make available for public inspection by copying"
6 and inserting in lieu thereof "promptly publish, and dis-
7 tribute ~~(by sale or otherwise)~~ copies of".

8 ~~(b)~~ Section 552 ~~(a)~~ ~~(3)~~ of title 5, United States Code,
9 is amended by striking out "on request for identifiable records

10 ~~Approved For Release 2005/06/09 : CIA-RDP75B00380R000700010008-0~~

11 place, fees to the extent authorized by statute, and proce-

1 dure to be followed," and inserting in lieu thereof the
2 following: "upon any request for records which (A) rea-
3 sonably describes such records, and (B) is made in accord-
4 ance with published rules stating the time, place, fees to
5 the extent authorized by statute, and procedure to be
6 followed,".

7 ~~(e)~~ Section 552(a) of title 5, United States Code, is
8 amended by adding at the end thereof the following new
9 paragraph:

10 "~~(5)~~ Each agency, upon receipt of any request for
11 records made under this subsection, shall—

12 "~~(A)~~ determine within ten days (excepting Sat-
13 urdays, Sundays, and legal public holidays) after the
14 date of such receipt whether to comply with the request
15 and shall immediately notify the person making the
16 request of such determination and the reasons therefor,
17 and of the right of such person to appeal to the head of
18 the agency any adverse determination; and

19 "~~(B)~~ make a determination with respect to such
20 appeal within twenty days (excepting Saturdays, Sun-
21 days, and legal public holidays) after the date of receipt
22 of such appeal.

23 "Any person making a request to an agency for records
24 under this subsection shall be deemed to have exhausted his

25 administrative remedies with respect to such request if the
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1 agency fails to comply with subparagraph (A) or (B) of
2 this paragraph. Upon any determination by an agency to
3 comply with a request for records, the records shall be made
4 promptly available to the person making such request."

5 ~~(d)~~ The third sentence of section 552(a)(3) of title 5,
6 United States Code, is amended by inserting immediately
7 after "the court shall determine the matter de novo" the
8 following: "; and may examine the contents of any agency
9 records in camera to determine whether such records or any
10 part thereof shall be withheld under any of the exemptions
11 set forth in subsection (b);".

12 ~~(e)~~ Section 552(a)(3) of title 5, United States Code,
13 is amended by adding at the end thereof the following new
14 sentence: "Notwithstanding any other provision of law, the
15 United States or the officer or agency thereof against whom
16 the complaint was filed shall serve a responsive pleading to
17 any complaint made under this paragraph within twenty
18 days after the service upon the United States attorney of the
19 pleading in which such complaint is made, unless the court
20 otherwise directs for good cause shown. The court may
21 assess against the United States reasonable attorney fees and
22 other litigation costs reasonably incurred in any case under
23 this section in which the United States or an officer or
24 agency thereof, as litigant, has not prevailed."

1 SEC. 2. Section 552(b)(1) of title 5, United States
2 Code, is amended to read as follows:

3 “(1) authorized under criteria established by an
4 Executive order to be kept secret in the interest of the
5 national defense or foreign policy;”.

6 SEC. 3. Section 552 of title 5, United States Code, is
7 amended by adding at the end thereof the following new
8 subsections:

9 “(d) On or before March 1 of each calendar year, each
10 agency shall submit a report covering the preceding calendar
11 year to the Speaker of the House and the President of the
12 Senate for referral to the appropriate committees of the Con-
13 gress. Th report shall include—

14 “(1) the number of determinations made by such
15 agency not to comply with requests for records made
16 to such agency under subsection (a) and the reasons
17 for each such determination;

18 “(2) the number of appeals made by persons under
19 subsection (a) (5) (B); the result of such appeals, and
20 the reason for the action upon each appeal that results
21 in a denial of information;

22 “(3) a copy of every rule made by such agency
23 regarding this section;

24 “(4) a copy of the fee schedule and the total

1 amount of fees collected by the agency for making
2 records available under this section; and

3 ~~“(5) such other information as indicates efforts to~~
4 ~~administer fully this section.~~

5 ~~“(e) Notwithstanding section 551(1) of this title, for~~
6 ~~purposes of this section, the term ‘agency’ means any execu-~~
7 ~~tive department, military department, Government corpora-~~
8 ~~tion, Government controlled corporation, or other establish-~~
9 ~~ment in the executive branch of the Government (including~~
10 ~~the Executive Office of the President), or any independent~~
11 ~~regulatory agency.”~~

12 SEC. 4. The amendments made by this Act shall take
13 effect on the ninetieth day beginning after enactment of
14 this Act.

15 That (a) the fourth sentence of section 552(a)(2) of title
16 5, United States Code, is deleted and the following substi-
17 tuted in lieu thereof: “Each agency shall maintain and make
18 available for public inspection and copying current indexes
19 providing identifying information for the public as to any
20 matter issued, adopted, or promulgated after July 4, 1967,
21 and required by this paragraph to be made available or pub-
22 lished. Each agency shall publish, quarterly or more fre-
23 quently, each index unless it determines by order published
24 in the Federal Register that the publication would be unneces-

1 sary and impracticable, in which case the agency shall none-
2 theless provide copies of such index on request at a cost
3 comparable to that charged had the index been published."

4 (b)(1) Section 552(a)(3) of title 5, United States
5 Code, is amended to read as follows:

6 "(3) Except with respect to the records made avail-
7 able under paragraphs (1) and (2) of this subsection, each
8 agency, upon any request for records which reasonably de-
9 scribes such records and which is made in accordance with
10 published rules stating the time, place, fees, and procedures
11 to be followed, shall make the records promptly available
12 to any person. When such records are made available under
13 this section in matters which the person seeking those records
14 can demonstrate to be of general public concern, the agency
15 complying with the request for the records shall make them
16 available for public inspection and purchase in accordance
17 with the provisions of this Act, unless the agency can de-
18 monstrate that such records could subsequently be denied to
19 another individual under the exceptions provided for in sub-
20 section (b) of this Act."

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21 (2) Section 552(a) of such title 5 is amended by redes-
22 ignating paragraph (4) as paragraph (5) and by inserting
23 immediately after paragraph (3) the following new para-
24 graph:

1 section, the Director of the Office of Management and Budget
2 shall promulgate regulations, pursuant to notice and receipt
3 of public comment, specifying a uniform schedule of fees ap-
4 plicable to all agencies. Such fees shall be limited to reason-
5 able standard charges for document search and duplication
6 and provide recovery of only the direct costs of such search
7 and duplication. Documents may be furnished without charge
8 or at a reduced charge where the agency determines that
9 waiver or reduction of the fee is in the public interest because
10 furnishing the information can be considered as primarily
11 benefiting the general public. But such fees shall ordinarily
12 not be charged whenever—

13 “(i) the person requesting the records is an indigent
14 individual;

15 “(ii) such fees would amount, in the aggregate, for
16 a request or series of related requests, to less than \$3;

17 “(iii) the records requested are not found; or

18 “(iv) the records located are determined by the
19 agency to be exempt from disclosure under subsection
20 (b).

21 “(B) On complaint, the district court of the United
22 States in the district in which the complainant resides, or
23 has his principal place of business, or in which the agency
24 records are situated, or in the District of Columbia, has
25 jurisdiction to enjoin the agency from withholding agency

1 records and to order the production of any agency records
2 improperly withheld from the complainant. In such a case
3 the court shall consider the case de novo, with such in camera
4 examination of the requested records as it find appropriate
5 to determine whether such records or any part thereof may
6 be withheld under any of the exemptions set forth in subsec-
7 tion (b) of this section, and the burden is on the agency to
8 sustain its action.

9 “(C) Notwithstanding any other provision of law, the
10 defendant shall serve an answer or otherwise plead to any
11 complaint made under this subsection within forty days
12 after the service upon the United States attorney of the
13 pleading in which such complaint is made, unless the court
14 otherwise directs for good cause shown.

15 “(D) Except as to causes the court considers of greater
16 importance, proceedings before the district court, as author-
17 ized by this subsection, and appeals therefrom, take prece-
18 dence on the docket over all causes and shall be assigned for
19 hearing and trial or for argument at the earliest practicable
20 date and expedited in every way.

21 “(E) The court may assess against the United States
22 reasonable attorney fees and other litigation costs reasonably
23 incurred in any case under this section in which the com-
24 plainant has substantially prevailed. In exercising its discre-
25 tion under this paragraph, the court shall consider the benefit

1 to the public, if any, deriving from the case, the commercial
2 benefit to the complainant and the nature of his interest in the
3 records sought, and whether the Government's withholding of
4 the records sought had a reasonable basis in law.

5 "(F) Whenever records are ordered by the court to be
6 made available under this section, the court shall on motion
7 by the complainant find whether the withholding of such rec-
8 ords was without reasonable basis in law and which Federal
9 officer or employee was responsible for the withholding. Be-
10 fore such findings are made, any officers or employees named
11 in the complainant's motion shall be personally served a copy
12 of such motion and shall have 20 days in which to respond
13 thereto, and shall be afforded an opportunity to be heard by
14 the court. If such findings are made, the court shall, upon
15 consideration of the recommendation of the agency, direct
16 that an appropriate official of the agency which employs such
17 responsible officer or employee suspend such officer or em-
18 ployee without pay for a period of not more than 60 days
19 or take other appropriate disciplinary or corrective action
20 against him.

21 "(G) In the event of noncompliance with the order of
22 the court, the district court may punish for contempt the
23 responsible employee, and in the case of a uniformed service,
24 the responsible member."

p. 3

NO
compliance
10/1/75

NO
compliance
10/1/75

10

1 (3) Section 552(b)(7) is amended to read as follows:

2 "Investigatory records compiled for law enforcement pur-
3 poses, but only to the extent that the production of such
4 records would (A) interfere with enforcement proceedings,
5 (B) deprive a person of a right to a fair trial or an impartial
6 adjudication or constitute a clearly unwarranted invasion of
7 personal privacy, (C) disclose the identity of an informer,
8 or (D) disclose investigative techniques and procedures."

9 (c) Section 552(a) of title 5, United States Code, is
10 amended by adding at the end thereof the following new
11 paragraph:

12 "(6)(A) Each agency, upon any request for records
13 made under paragraph (1), (2), or (3) of this subsection,
14 shall—

15 "(i) determine within ten days (excepting Satur-
16 days, Sunday, and legal public holidays) after the
17 receipt of any such request whether to comply with such
18 request and shall immediately notify the person making
19 such request of such determination and the reasons there-
20 for, and of the right of such person to appeal to the head
21 of the agency any adverse determination; and

22 "(ii) make a determination with respect to such
23 appeal within twenty days (excepting Saturdays, Sun-
24 days, and legal public holidays) after the receipt of such

referred to
P.

1 is in whole or part upheld, the agency shall notify the
2 person making such request of the provisions for judicial
3 review of that determination under paragraph (4) of
4 this subsection.

5 “(B) Upon the written certification by the head of an
6 agency setting forth in detail his personal findings that a
7 regulation of the kind specified in this paragraph is necessi-
8 tated by such factors as the volume of requests, the volume of
9 records involved, and the dispersion and transfer of such
10 records, and with the approval in writing of the Attorney
11 General, the time limit prescribed in clause (i) for initial
12 determinations may by regulation be extended with respect
13 to specified types of records of specified components of such
14 agency so as not to exceed thirty working days. Any such
15 certification shall be effective only for periods of fifteen
16 months following publication thereof in the Federal Register.

17 “(C) In unusual circumstances as specified in this sub-
18 paragraph, the time limits prescribed in clauses (i) or (ii)
19 of subparagraph (A), but not those prescribed pursuant to
20 subparagraph (B), may be extended by written notice to the
21 requester setting forth the reasons for such extension and the
22 date on which a determination is expected to be dispatched. No
23 such notice shall specify a date that would result in an exten-
24 sion for more than ten working days. As used in this subpara-
25 graph, ‘unusual circumstances’ means, but only to the extent

1 reasonably necessary to the proper processing of the partic-
2 ular request—

3 “(i) the need to search for and collect the requested
4 records from field facilities or other establishments that
5 are separate from the office processing the request;

6 “(ii) the need to assign professional or managerial
7 personnel with sufficient experience to assist in efforts to
8 locate records that have been requested in categorical
9 terms, or with sufficient competence and discretion to aid
10 in determining by examination of large numbers of rec-
11 ords whether they are exempt from compulsory disclosure
12 under this section and if so, whether they should never-
13 theless be made available as a matter of sound policy
14 with or without appropriate deletions;

15 “(iii) the need for consultation, which shall be con-
16 ducted with all practicable speed, with another agency
17 having a substantial interest in the determination of the
18 request or among two or more components of the agency
19 having substantial subject-matter interest therein, in order
20 to resolve novel and difficult questions of law or policy;
21 and

22 “(iv) the death, resignation, illness, or unavailability
23 due to exceptional circumstances that the agency could
24 not reasonably foresee and control, of key personnel

1 *who would ordinarily be readily available for such*
2 *duties.*

3 *“(D) Whenever practicable, requests and appeals shall*
4 *be processed more rapidly than required by the time periods*
5 *specified under (i) and (ii) of subparagraph (A) and para-*
6 *graphs (B) and (C). Upon receipt of a request for specially*
7 *expedited processing accompanied by a substantial showing*
8 *of a public interest in a priority determination of the request,*
9 *including but not limited, to requests made for use of any*
10 *person engaged in the collection and dissemination of news,*
11 *an agency may by regulation or otherwise provide for special*
12 *procedures or the waiver of regular procedures.*

13 *“(E) An agency may by regulation transfer part of the*
14 *number of days of the time limit prescribed in (A)(ii) to*
15 *the time limit prescribed in (A)(i). In the event of such a*
16 *transfer, the provisions of paragraph (C) shall apply to*
17 *the time limits prescribed under such clauses as modified by*
18 *such transfer. Any person making a request to any agency for*
19 *records under paragraph (1), (2), or (3) of this subsection*
20 *shall be deemed to have exhausted his administrative remedies*
21 *with respect to such request if the agency fails to comply*
22 *with the applicable time limit provisions of this para-*
23 *graph. If the Government can show exceptional circumstances*
24 *exist and that the agency is exercising due diligence in re-*
25 *sponding to the request, the court may retain jurisdiction*

1 *and allow the agency additional time to complete its review of*
2 *the records. Upon any determination by an agency to comply*
3 *with a request for records, the records shall be made prompt-*
4 *ly available to such person making such request. Any noti-*
5 *fication of denial of any request for records under this sub-*
6 *section shall set forth the names and titles or positions of*
7 *each person responsible for the denial of such request."*

8 *SEC. 2. (a) Section 552(b)(1) of title 5, United States*
9 *Code, is amended to read as follows:*

10 *"(1) specifically required by an Executive order*
11 *or statute to be kept secret in the interest of national*
12 *defense or foreign policy and are in fact covered by such*
13 *order or statute;"*

14 *(b) Section 552(b) of title 5, United States Code, is*
15 *amended by adding at the end the following "Any reason-*
16 *ably segregable portion of a record shall be provided to any*
17 *person requesting such record after deletion of the portions*
18 *which are exempt under this subsection."*

19 *SEC. 3. Section 552 of title 5, United States Code, is*
20 *amended by adding at the end thereof the following new*
21 *subsections:*

22 *"(d) On or before March 1 of each calendar year, each*
23 *agency shall submit a report covering the preceding calen-*
24 *dar year to the Committee on the Judiciary of the Senate*

1 *and the Committee on Government Operations of the House*
2 *of Representatives, which shall include—*

3 “(1) *the number of determinations made by such*
4 *agency not to comply with requests for records made to*
5 *such agency under subsection (a) and the reasons for*
6 *each such determination;*

7 “(2) *the number of appeals made by persons under*
8 *subsection (a)(6), the result of such appeals, and the*
9 *reason for the action upon each appeal that results in a*
10 *denial of information;*

11 “(3) *the names and titles or positions of each person*
12 *responsible for the denial of records requested under this*
13 *section, and the number of instances of participation*
14 *for each;*

15 “(4) *a copy of every rule made by such agency*
16 *regarding this section;*

17 “(5) *the total amount of fees collected by the*
18 *agency for making records available under this section;*

19 “(6) *a copy of every certification promulgated by*
20 *such agency under subsection (a)(6)(B) of this sec-*
21 *tion; and*

22 “(7) *such other information as indicates efforts to*
23 *administer fully this section.*

24 *The Attorney General shall submit an annual report on or*

25 *before March 1 of each calendar year which shall include for*
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1 the prior calendar year a listing of the number of cases
2 arising under this section, the exemption involved in each
3 case, the disposition of such case, and the cost, fees, and
4 penalties assessed under subsections (a)(3) (E), (F) and
5 (G). Such report shall also include a description of the
6 efforts undertaken by the Department of Justice to encourage
7 agency compliance with this section.

8 “(e) For purposes of this section, the term ‘agency’
9 means any agency defined in section 551(1) of this title,
10 and in addition includes the United States Postal Service,
11 the Postal Rate Commission, and any other authority of
12 the Government of the United States which is a corporation
13 and which receives any appropriated funds.”.

14 SEC. 4. There is hereby authorized to be appropriated
15 such sums as may be necessary to assist in carrying out the
16 purposes of this Act and of section 552 of title 5, United
17 States Code.

18 SEC. 5. The amendments made by this Act shall take
19 effect on the ninetieth day beginning after the date of enact-
20 ment of this Act.

Passed the House of Representatives March 14, 1974.

Attest: W. PAT JENNINGS,
Clerk.

Passed the Senate May 30, 1974.

Approved For Release 2005/06/09 : CIA-RDP75B00380R000700010008-0

Attest: FRANCIS R. VALEO,

93d CONGRESS
2d SESSION

H. R. 12471

AN ACT

To amend section 552 of title 5, United States Code, known as the Freedom of Information Act.

MARCH 19, 1974

Received

MAY 30, 1974

Considered, amended, read the third time, and passed